

EXHIBIT A

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October 31, 2008

Don Bailey, Esquire
Bailey & Ostrowski
4311 North 6th Street
Harrisburg, PA 17110

Re: Stephen Roberts, et al. v. Jack Mentzer, et al.

Dear Mr. Bailey:

After consultation with the Defendants in the above-captioned action, I have been required and directed to enclose with this letter a Motion for Sanctions for violations of Federal Rule of Civil Procedure 11 in relation to the above-referenced action. The purpose of this letter is to advise that the Defendants in this matter will require my co-counsel Mr. Lavery and I to file the enclosed Motion on November 7, 2008 unless your client, Michael Lyons withdraws and/or voluntarily discontinues with prejudice his participation in the Amended Complaint in the above-referenced action.

The grounds for the Rule 11 sanctions are set forth in the Motion but I will provide an overview of them here. Defendants aver, *inter alia*, that sanctions are appropriate here because:

1. Plaintiff, Michael S. Lyons, made specific requests for personnel files in the discovery phase of the predecessor lawsuit to this action: Michael S. Lyons v. Jack Mentzer, et al. No. 08-CV-0094;
2. Plaintiff, Michael S. Lyons, specifically placed at issue in Michael S. Lyons v. Jack Mentzer, et al., the issue of his performance as compared with the performance of other employees, thereby necessitating the use of personnel records in the defense of this lawsuit;
3. Plaintiff Michael S. Lyons, cannot now claim that he had a privacy interest in any of the contents of his personnel file when *he himself* made it a part of the litigation.
4. Further, to the extent that personnel file materials were used, there is absolutely no basis for Lyons to claim any protection under the First, Fourth or Fourteenth Amendments of the United States Constitution.

HAR:82949.1/ELI035-255253

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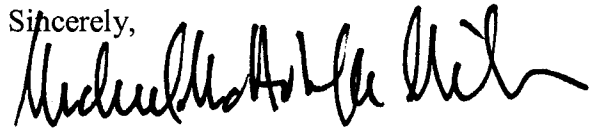
5. With respect to Plaintiff Michael S. Lyons' claim that, following the dismissal of Lyons v. Jack F. Mentzer, et al., he was denied payment of a "court stand by" *per diem* in retaliation for his decision to bring the original action, there is no basis for that claim.

6. I enclose herewith documents demonstrating that Chief Mentzer specifically approved the payment of the *per diem* following Officer Lyons' request. The documents also demonstrate that the *per diem* was approved by Chief Mentzer, processed as part of the payment request and that the payment was converted by Officer Lyons when he cashed his paycheck prior to filing the Amended Complaint.

As is evidenced in the Motion, all of Plaintiff Michael S. Lyons' claims in this action are frivolous and without legal merit. Accordingly, if the Complaint is not withdrawn by November 7, 2008, the Borough has directed us to file the Motion promptly.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McAuliffe Miller", written in a cursive style.

Michael McAuliffe Miller
For WolfBlock LLP

MMM:kcs

Enclosure

DRAFT MOTION FOR SANCTIONS

Lyons contends that his First, Fourth and Fourteenth Amendment rights were violated when Defendants allegedly used Borough owned and maintained personnel files during the discovery phase of a predecessor employment discrimination action. Lyons additionally claims that he was denied a *per diem* known as "court stand by" pay in retaliation for filing his predecessor Complaint. *Amended Complaint* in ¶ 26. Lyons' claims are completely without merit.

First, Lyons cannot now claim that his rights have been violated when *he himself* placed his own personnel file at issue in the predecessor civil action by asking for it in the discovery phase of the case.

Second, though Lyons claims that he was denied a "court stand by" *per diem* in retaliation for the filing of his predecessor civil action, it is beyond dispute that he was actually paid the stipend in question. *Amended Complaint* in ¶ 26. Despite being provided uncontroverted evidence that he was paid the *per diem*, Lyons has persisted in maintaining this meritless claim.

Third, there is no authority for the proposition that a municipal employer is barred from questioning its own employees during a discovery deposition using information garnered during the Borough's own participation in an employer-employee relationship. A personnel file is the property of and maintained by the employer--in this case, the Borough of Elizabethtown.

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There is simply no legal or factual basis for the instant action and Lyons' failure to voluntarily dismiss this action should lead to the imposition of sanctions.

II. LYONS' PREDECESSOR CIVIL ACTION

1. One of the Plaintiffs in the instant action, Michael J. Lyons, was a plaintiff in a previously-filed Civil Action (Lyons v. Jack F. Mentzer, et al) involving the identical Defendants and docketed in the United States District Court for the Eastern District of Pennsylvania at Docket No. 08-CV-0094.

2. The parties to, theories alleged and facts set forth in Lyons v. Jack F. Mentzer, et al. are intertwined with the subject matter of Plaintiffs' instant Complaint.

3. In Lyons v. Jack F. Mentzer, et al., Lyons claimed that his First and Fourteenth Amendment rights were violated and that he had been retaliated against by Defendants Mentzer, Ditzler and the Borough for speaking on matters of alleged public concern.

4. Central to his proofs in Lyons v. Jack F. Mentzer, et al., Plaintiff Michael Lyons claimed that he was subject to discipline that was more severe than that suffered by other, similarly situated employees of the Elizabethtown Police Department.

5. In Lyons v. Jack F. Mentzer, et al., Plaintiff Michael Lyons also claimed that other terms and conditions of employment (such as the requirement

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that he fill out a light duty form to describe his ability to work) became more stringent and severe after the filing of his lawsuit.

6. The remainder of the Plaintiffs are all current or former police officers employed by the Borough of Elizabethtown who were deposed during the discovery phase of Lyons v. Jack F. Mentzer, et al.

7. Lyons v. Jack F. Mentzer, et al. was assigned to the Honorable Juan Sanchez for disposition.

8. Following a six-month period of discovery, Lyons v. Jack F. Mentzer, et al. was the subject of a Motion for Summary Judgment and was dismissed on October 2, 2008 by Order of Court following oral argument pursuant to F.R.C.P. 56.

III. THE INSTANT ACTION

9. In the Instant Action, Lyons alleges, in pertinent part, as follows:

(a) Defendants Mentzer, Ditzler and Elizabethtown Borough used certain unidentified contents of all of the named Plaintiffs' personnel files during their examination which took place in depositions occurring during the discovery phase of Lyons v. Jack F. Mentzer, et al.;

(b) the use of certain unidentified contents of Lyons' personnel files during depositions occurring in the discovery phase of Lyons v. Jack F. Mentzer, et al. constituted an unauthorized disclosure of his personnel files that

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violated his rights under the First, Fourth and Fourteenth Amendments to the United States Constitution;

(c) the personnel files maintained by the Borough were Lyons' property and not the Borough's property;

(d) Lyons had a right of privacy under the First Amendment that was violated by the use of his personnel file during the discovery phase of Lyons v. Jack F. Mentzer, et al.;

(e) Lyons had a right of privacy under the Fourth Amendment that was violated by the use of his personnel files during the discovery phase of Lyons v. Jack F. Mentzer, et al.;

(f) Lyons had a right of privacy under the Fourteenth Amendment that was violated by the use of his personnel files during the discovery phase of Lyons v. Jack F. Mentzer, et al.;

IV. DEFENDANTS' MOTION FOR SANCTIONS

10. On October 31, 2008, the Defendants served on Lyons a copy of this Motion for Sanctions and accompanying letter of explanation, setting forth with specificity the ways in which the Defendants contend that Lyons violated his duties under Rule 11(b) of the Federal Rules of Civil Procedure. A certification of the service of the Motion, with a copy of the same, is attached hereto as Exhibit A.

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11. Lyons did not accede to the Defendants' demand to withdraw the Complaint.

12. Pursuant to Rule 11(b) of the Rules of Civil Procedure, Lyons certified to this Court that, to the best of his knowledge, information and belief, formed after a reasonable inquiry: (1) his Complaint was not being presented for any improper purpose; (2) the claims and other legal contentions therein were warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law; and (3) the factual allegations set forth in the Complaint are warranted on the evidence.

13. In filing and persisting in his Complaint, Lyons has violated all three of these certifications.

V. ARGUMENT

A. LYONS' COMPLAINT SETS FORTH FRIVOLOUS LEGAL CLAIMS

14. Lyons specious claims that his rights under the First, Fourth and Fourteenth Amendments to the United States Constitution have been violated lack any basis in existing law and are completely frivolous under F.R.C.P. 11(b)(2).

1. THE BOROUGH'S USE OF MICHAEL LYONS' PERSONNEL FILE DURING DISCOVERY DID NOT VIOLATE MICHAEL LYONS' FIRST, FOURTH OR FOURTEENTH AMENDMENT RIGHTS

15. During the discovery phase of *Lyons v. Jack F. Mentzer, et al.*, Lyons, through a Request for Production of Documents, demanded a copy of his own

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personnel file (Lyons also requested the personnel files of Defendant Mentzer, Defendant Ditzler and Officer Nicholas Finicle).

16. Plaintiff cannot now claim that he had a privacy interest in any of the contents of his personnel file when *he himself* made the contents of his personnel file a part of the predecessor litigation through his own discovery request.¹ None of the other Plaintiffs are similarly situated.

17. Further, to the extent that Lyons claimed repeatedly (in the predecessor litigation) that, in comparison to other Elizabethtown Borough police officers, he was treated less favorably in areas of, *inter alia*, discipline and light duty leave, he cannot now complain that the Defendants' alleged use of his own personnel file to verify or disprove his claims was somehow a violation of his constitutional rights.

18. Though he is now represented by the same counsel as in Lyons v. Jack F. Mentzer, et al., Officer Lyons never sought the issuance of a protective order even though he and his counsel could have sought the intervention of this Court.

¹ The fact that Lyons requested his own personnel file thus making it part of discovery is central to distinguishing his claims from the other Plaintiffs. Though Defendants do not concede that they violated any right accruing to the other Plaintiffs, Lyons--by virtue of his prior status as a litigant in Lyons v. Jack F. Mentzer, et al.--is differently situated and his claims must be viewed exclusively through that prism. So, while Defendants intend to challenge the other Plaintiffs' claims through the vehicle of a Rule 12 motion, Lyons' claims are distinctly different and should not have been brought in the first instance.

19. Defendants are unaware of any authority supporting the proposition that any plaintiff is entitled to place his own personnel file at issue during litigation and—at the same time—preclude the employer/defendants from using its contents during a discovery deposition.²

20. In fact, the principle that materials requested and produced during discovery are available for use during discovery by both sides is so self-evident and fundamental that any plaintiff making any reasonable inquiry is on notice that a claim like the one presented here is entirely meritless.

21. Had Lyons performed even a minimal investigation into his claims, much less the required reasonable investigation, he would have known that there was no basis in law for his claims. In fact, since Lyons is represented by the same counsel of record in front of the same court he is responsible for understanding that his request for his own personnel file during discovery does not give rise to any First Amendment protection.

22. Lyons' claim that his First Amendment rights were violated by the Defendants' alleged use of his own personnel file is without any basis in law and properly forms the basis for sanctions under Rule 11.

² In order to decide this Motion for Sanctions, this Court need not reach the issue of whether or not all the Plaintiffs' rights Fourth or Fourteenth Amendment rights were violated since Lyons is differently situated and his claims are *sui generis*.

23. It is self evident that the Defendants' alleged use of Lyons' personnel file was not undertaken in retaliation for any exercise of Lyons' right to free speech or right to petition this Court but instead because Lyons' own request made it part of discovery in the predecessor litigation.

24. Further, any alleged property interest which Lyons may claim was waived by Lyons' voluntary decision to make his personnel file part of the discovery process.

25. As such, there is simply no basis in the law to suggest that Lyons had any right arising under the Fourth Amendment under which he had an expectation of privacy regarding the Defendants' alleged review or use of the contents of his personnel file during the defense of Lyons v. Jack F. Mentzer, et al.

26. Finally, Defendants are unaware of any authority that establishes that Lyons had any due process rights arising under the Fourteenth Amendment which would require the Defendants to notify Lyons and provide him a hearing before reviewing materials from personnel files which the Borough maintains.

27. First, there is no authority for the proposition that employer-maintained personnel files are the property of the employee and not the employer.

28. Second, because the files are not the property of an employee, then no process is due because there can be no denial of a property interest.

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29. There is no regulation, no policy and no rule that would establish any such right.

30. In fact, no court has ever embraced such a rule imposing due process requirements on an employer's review of personnel files because any such rule would be a significant restriction on the ability of employers to manage his workforce.

31. If an employee had the right to demand due process before an employer reviewed employment files that the employer itself maintained, effective personnel management would be impossible.

32. There is simply no basis to contend, as Lyons does here, that any right under the First, Fourth or Fourteenth Amendments was violated by the Defendants' acts. Lyons' claims are without any foundation in law or fact and should be subject to sanction.

2. MICHAEL LYONS' RETALIATION CLAIM

33. Lyons claims that, following the dismissal of *Lyons v. Jack F. Mentzer, et al.*, he was denied payment of a "court stand by" *per diem* in retaliation for his decision to bring the original action.

34. There is no basis for this claim whatsoever.

35. Prior to the filing of this Motion, Lyons' Counsel was provided with indisputable evidence that: 1) Chief Mentzer specifically approved of and

authorized payment of the *per diem*; 2) Lyons was paid the *per diem* as requested; and 3) Lyons converted his paycheck and, thus, accepted the *per diem* he requested.

36. Each one of those facts was either known (or, through the vehicle of Lyons' own cashed paycheck, should have been known) to Lyons prior to the filing of his Amended Complaint.

37. Lyons' failure to withdraw this claim in light of proof that the claim is without factual support is a basis for the assessment of sanctions.

3. LYONS' REMAINING CLAIMS ARE MERITLESS

38. Lyons has claimed that Defendants used "shadow files" in order to defend the predecessor lawsuit.

39. Lyons claims that he was never given the contents of the "shadow files" and further claims that this somehow prejudiced his conduct of this lawsuit.

40. There is no basis to claim that the alleged (and absolutely incorrect) contention that documents were not produced in the predecessor litigation has any merit relating to Lyons' current claims.

41. Through its counsel in the predecessor litigation, the Borough produced the contents of all "shadow files" in its possession. Thus, this claim is without merit as well

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42. Further, Lyons is seeking bootstrap to this case a discovery dispute arising in a previous and separate piece of litigation.

43. Inexplicably, Lyons has also claimed that his right of association under the First Amendment has been harmed by the Borough's use of personnel files in the defense of Lyons v. Jack F. Mentzer, et al.

44. There is no case of which Defendants are aware that stands for the proposition that the use of personnel files in litigation harms the ability of co-workers to associate with each other.

45. Further, all of the Plaintiffs named did give deposition testimony in Lyons v. Jack F. Mentzer, et al. Accordingly, there is no factual basis for Lyons' claim of harm to his associational rights.

**VI. DEFENDANTS ARE ENTITLED TO RELIEF IN THE FORM OF SANCTIONS
IMPOSED ON PLAINTIFFS**

46. Consistent with Rule 11(c), this Court is empowered to impose sanctions against Lyons for his violations of Rule 11.

47. Based on the circumstances of this case, the Court should strike the Complaint against the Defendant Lyons, in its entirety and with prejudice, as an appropriate sanction.

48. Additionally, given the complete abdication of his duties under Rule 11(b) and in order provide an effective deterrent against similar future conduct, this Court should issue an order directing the payment of the reasonable attorneys' fees

and expenses incurred in defending the Complaint and as a result of these violations.

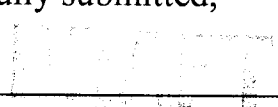
WHEREFORE, Jack F. Mentzer, Joseph M. Ditzler and Elizabethtown Borough, respectfully request that this Court grant this Motion for Sanctions and enter an Order:

(a) striking the Complaint entered in the above-captioned matter solely as to Michael Lyons it its entirety and with prejudice;

(b) directing that Lyons pay all reasonable attorneys' fees and expenses incurred in defending the Complaint as to Lyons and seeking the sanctions granted hereby; and

(c) award such other relief as the Court deems necessary and just.

Respectfully submitted,



Michael McAuliffe Miller
mmiller@wolfblock.com
PA ID No. 78507
WolfBlock, LLP
213 Market Street, 9th Floor
Harrisburg, PA 17101
(717) 237-7174

Attorneys for Defendants

Dated: _____, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this, the 7th day of November, 2008, a true and correct copy of the foregoing Motion for Sanctions was served upon Plaintiff's counsel by first class mail, addressed as follows:

Don Bailey, Esquire
4311 North Sixth Street
Harrisburg, PA 17110

S/ Michael McAuliffe Miller
Michael McAuliffe Miller

**DOCUMENTS DEMONSTRATING
THAT MICHAEL LYONS
WAS PAID A COURT
STANDBY PER DIEM**

Michael Lyons

Payroll Period- 9/21/08 to 10/04/08

Regular pay

80 hours

80 x 28.81 = 2,304.80

Overtime pay

9 hours

9 x 43.65 = 392.85

OIC pay

16 hours (calculated @ regular pay rate)

\$27.52

Standby pay

\$75.00 (calculated @ overtime rate)

Total

\$2,800.17

Mr. Lyons, Michael
Patrolman

Elizabethtown Police Department

Supervisors Initials: J.M.

FROM	TO	DATE	Supervisor	Patrolman	Holiday	Comp Time	Training	Medical	Certification	Detention	Verbal	Sick	Light	Service	Part Time	Clerical	Straight Time	Holiday	Overtime
9/21/08	9/21/08	9/21/08																	
9/22/08	9/22/08	9/22/08																	
9/23/08	9/23/08	9/23/08																	
9/24/08	9/24/08	9/24/08																	
9/25/08	9/25/08	9/25/08																	
9/26/08	9/26/08	9/26/08																	
9/27/08	9/27/08	9/27/08																	
9/28/08	9/28/08	9/28/08																	
9/29/08	9/29/08	9/29/08																	
9/30/08	9/30/08	9/30/08																	
10/1/08	10/1/08	10/1/08																	
10/2/08	10/2/08	10/2/08																	
10/3/08	10/3/08	10/3/08																	
10/4/08	10/4/08	10/4/08																	
TOTAL																			

OCT 2006

2010
per hr.
code 19
* \$75.00 stand by for County Court.
2.58 hours
J.M.

Elizabethtown Police Department

O.I.C. Payroll Sheet

For Pay period 9/21/08 through 10/4/08

Name	Wheale	Zongilla	Farnsler	Deardorff	Lyons	Shuey	Pearson	Finicle	Regel
9/21/08	8	8							
9/22/08									
9/23/08	7.75								
9/24/08	8.5				8				
9/25/08					8				
9/26/08									
9/27/08									
9/28/08									
9/29/08									
9/30/08									
10/1/08	8								
10/2/08									
10/3/08									
10/4/08									
OIC Hrs	32.25	8	0	0	16	0	0	0	0
Amt Due	\$55.47	\$13.76	\$0.00	\$0.00	\$27.52	\$0.00	\$0.00	\$0.00	\$0.00
Hour Equiv	1.93	0.48	0.00	0.00	0.96	0.00	0.00	0.00	0.00

Personnel/Payroll

Page: 18

Print Employee Hours
 POLICE-4TH YEAR-D,E,F
 Pay Period 09/21/08-10/04/08

Processing Date: 10/06/08
 Date: 10/06/08 Time: 10:13

Employee #	Last name	First name	M	Day	Code	Reg Hrs	Ot Hrs	Tot Hrs
@000000001	FARNSLER	RICK	A	Sun 09/21/08	01 POLICE	80.000		
				Mon 09/22/08	01 POLICE	59.010		
				Tue 09/23/08	30 POLICE			
				Wed 09/24/08	30 POLICE			
				Thu 09/25/08	30 POLICE			
				Fri 09/26/08	30 POLICE			
				Sat 09/27/08	30 POLICE			
				Sun 09/28/08	30 POLICE			
				Mon 09/29/08	30 POLICE			
				Tue 09/30/08	30 POLICE			
				Wed 10/01/08	30 POLICE			
				Thu 10/02/08	30 POLICE			
				Fri 10/03/08	30 POLICE			
				Sat 10/04/08	30 POLICE			
						139.010	0.000	139.010
@000000002	LYONS	MICHAEL	S	Sun 09/21/08	01 POLICE	80.000		
				Mon 09/22/08	19 COURT-4TH YR F		2.580	
				Tue 09/23/08	19 COURT-4TH YR F		2.000	
				Wed 09/24/08	20 TRAINING-4TH YR F		7.000	
				Thu 09/25/08	01 POLICE	0.960		
				Fri 09/26/08	30 POLICE			
				Sat 09/27/08	30 POLICE			
				Sun 09/28/08	30 POLICE			
				Mon 09/29/08	30 POLICE			
				Tue 09/30/08	30 POLICE			
				Wed 10/01/08	30 POLICE			
				Thu 10/02/08	30 POLICE			
				Fri 10/03/08	30 POLICE			
				Sat 10/04/08	30 POLICE			
						80.960	11.580	92.540
@000000003	SHUEY	MATTHEW	T	Sun 09/21/08	01 POLICE	80.000		
				Mon 09/22/08	04 TRAINING-4TH YR D		7.000	
				Tue 09/23/08	30 POLICE			
				Wed 09/24/08	30 POLICE			
				Thu 09/25/08	30 POLICE			
				Fri 09/26/08	30 POLICE			
				Sat 09/27/08	30 POLICE			
				Sun 09/28/08	30 POLICE			
				Mon 09/29/08	30 POLICE			
				Tue 09/30/08	30 POLICE			
				Wed 10/01/08	30 POLICE			
				Thu 10/02/08	30 POLICE			
				Fri 10/03/08	30 POLICE			
				Sat 10/04/08	30 POLICE			
						80.000	7.000	87.000

@000000002 MICHAEL S LYONS

102-52-4722 09/21/08 10/04/08 48301

Regular Pay	80.960	2,332.45	47,852.87	FEDERAL	274.01	4,220.18
Overtime Pay	11.580	505.46	505.46	FICA	0.00	0.00
Vacation			0.00	STATE	87.12	1,484.63
Sick			0.00	LOCAL	28.38	483.61
Personal			0.00	MEDICARE	41.15	701.20
Compensation			0.00	PA U. C.	1.70	29.00
				LST	2.00	40.00
				POLICE BARGAININ	40.00	800.00
				SAVINGS ACCOUNT	250.00	5,000.00
				DEFERRED COMP	100.00	2,000.00
				PENSION DEDUCTIO	141.90	2,417.92

28.81	2,837.91	966.26	1,871.65	48,358.33	17,176.54	31,181.79
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48301

paid 10/6

10/07/08 ***1,871.65

ONE THOUSAND EIGHT HUNDRED SEVENTY ONE and 65/100*****

MICHAEL S LYONS
 505 ROSE PETAL LANE
 MOUNT JOY
 PA 17552

0310000400 30/08/2000
6315361428

Page,1 of 1

031000040
10/08/2006
6315324416

THIS IS A LEGAL COPY OF
YOUR CHECK. YOU CAN USE IT
THE SAME WAY YOU WOULD
USE THE ORIGINAL CHECK

800/40/01 1899060E11313090681 10/07/2008 300223681842

'0000 IB ? 16 S.'